

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

James L. Kemp,

Plaintiff,

vs.

Joseph M. Arpaio, et al.,

Defendants.

No. CV-15-01784-PHX-PGR (ESW)

ORDER

Having reviewed *de novo* the Report and Recommendation of Magistrate Judge Willett (Doc. 77) in light of Plaintiff's Objections to the Magistrate Judge's PLRA Mandated Report and Recommendations (Doc. 80), the Court finds that the plaintiff's objections should be overruled because the Court agrees with the Magistrate Judge's conclusions in her screening of the plaintiff's Second Amended Complaint (Doc. 76). Therefore,

IT IS ORDERED that the Magistrate Judge's Report and Recommendation (Doc. 77) is accepted and adopted by the Court.

IT IS FURTHER ORDERED that the plaintiff's claims in Count One of the Second Amended Complaint regarding the alleged assaults that occurred on April 7, 2010, August 6, 2010, and August 18, 2013 are dismissed.

1 IT IS FURTHER ORDERED that defendants Garner, Brown, and Arpaio shall
2 answer the Eighth Amendment failure to protect claim pertaining to the alleged
3 September 8, 2014 assault in Count One of the Second Amended Complaint.

4 IT IS FURTHER ORDERED that the following counts of the Second Amended
5 Complaint are dismissed: Count Two, Count Three, Count Four, Count Seven,
6 Count Nine, Count Ten, Count Twelve, Count Thirteen, Count Fourteen, and Count
7 Fifteen.

8 IT IS FURTHER ORDERED that defendant Feraru shall answer Count Five
9 of the Second Amended Complaint.

10 IT IS FURTHER ORDERED that defendants Arpaio, Tenny, McKay, Fisk, and
11 Chavira shall answer the First Amendment retaliation claim in Count Six of the
12 Second Amended Complaint.

13 IT IS FURTHER ORDERED that the plaintiff's claims under 42 U.S.C. §§ 1985
14 and 1986 are dismissed.

15 IT IS FURTHER ORDERED that defendants San Martin and Anders shall
16 answer Count Eight of the Second Amended Complaint.

17 IT IS FURTHER ORDERED that the plaintiff's claims relating to incidents
18 which occurred prior to September 2013 are dismissed as time-barred.

19 IT IS FURTHER ORDERED that defendants Steinhauser, Burke, Guta,
20 Bernal-Fulford, and Baerg shall answer Count Eleven of the Second Amended
21 Complaint regarding alleged Eighth and Fourteenth Amendment medical claims
22 arising from incidents dated October 18, 2013, September 9, 2014, and March 13,
23 2015.

24 IT IS FURTHER ORDERED that defendants Arpaio, Alvarez, Tenny, and
25 McKay shall answer Count Sixteen of the Second Amended Complaint.
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1 IT IS FURTHER ORDERED that defendants Maricopa County, Montgomery,
2 Rada, Najera, Klages, Rubio, Shugart-LBJ-McKay Team, Flannery, Carper, Acosta,
3 Flaggman, Balaji, Wade, Bretado, Cooper, Odom, Logan, Cruz, Lee, Angry, Hughes,
4 Bruner, Sminch, and Grange are dismissed without prejudice from this action.

5 IT IS FURTHER ORDERED as follows:

6 1. The Clerk of Court shall send the plaintiff a service packet including the
7 Second Amended Complaint (Doc. 76), this Order, and a copy of the Marshal's
8 Process Receipt & Return form (USM-285) and Notice of Lawsuit & Request for
9 Waiver of Service of Summons form for defendants Baerg, Garner, McKay, Fisk,
10 Chavira, Alvarez, Brown, Steinhauser, and Burke.

11 2. The plaintiff shall complete and return the service packet to the Clerk of
12 Court within 21 days of the date of filing of this Order.¹ The United States Marshal
13 will not provide service of process if the plaintiff fails to comply with this Order.

14 3. If the plaintiff does not either obtain a waiver of service of the summons or
15 complete service of the Summons and Second Amended Complaint on a defendant
16 within 90 days of the filing of the Second Amended Complaint or within 60 days of
17 the filing of this Order, whichever is later, the action may be dismissed as to each
18 defendant not served. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

19 4. The United States Marshal shall retain the Summons, a copy of the Second
20 Amended Complaint, and a copy of this Order for future use.

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23 If a defendant is an officer or employee of the Arizona Department of
24 Corrections, the plaintiff shall list the address of the specific institution where the
25 officer or employee works. Service cannot be effected on an officer or employee at
26 the Central Office of the Arizona Department of Corrections unless the officer or
employee works there.

1 5. The United States Marshal shall notify defendants Baerg, Garner, McKay,
2 Fisk, Chavira, Alvarez, Brown, Steinhauer, and Burke of the commencement of this
3 action and request waiver of service of the summons pursuant to Rule 4(d) of the
4 Federal Rules of Civil Procedure. The notice to the defendants shall include a copy
5 of this Order. The Marshal shall file waivers of service of the summons or requests
6 for waivers that were returned as undeliverable as soon as they are received. If a
7 waiver of service of summons is returned as undeliverable or is not returned by the
8 defendants within thirty days from the date the request for waiver was sent by the
9 Marshal, the Marshal shall:

10 (a) Personally serve copies of the Summons, Second Amended
11 Complaint, and this Order upon the defendants pursuant to Rule 4(e)(2) of the
12 Federal Rules of Civil Procedure; and


13 (b) Within ten days after personal service is effected, file the return of
14 service for the defendants, along with evidence of the attempt to secure a waiver of
15 service of the summons and of the costs subsequently incurred in effecting service
16 upon the defendants. The costs of service shall be enumerated on the return of
17 service form (USM-285) and shall include the costs incurred by the Marshal for
18 photocopying additional copies of the Summons, Second Amended Complaint, or
19 this Order and for preparing new process receipt and return forms (USM-285), if
20 required. Costs of service will be taxed against the personally served defendants
21 pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise
22 ordered by the Court.

23 6. If the defendants agree to waive service of the Summons and Second
24 Amended Complaint (Doc. 76), he or she shall **return the signed waiver forms to**
25 **the United States Marshal, not to the plaintiff.**
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1 7. The defendants shall answer the Second Amended Complaint or otherwise
2 respond by appropriate motion within the time provided by applicable provisions of
3 Rule 12(a) of the Federal Rules of Civil Procedure.

4 IT IS FURTHER ORDERED that the following motions are denied as moot:
5 (i) Defendants Arpaio and Tenny's Motion for Summary Judgment (Doc. 53), which
6 concerns the First Amended Complaint; (ii) Defendant Brendon Baerg's 12(B)(5)
7 Motion to Dismiss for Insufficient Service of Process (Doc. 63); and (iii) the plaintiff's
8 Motion to Extend Time for Service on Defendant Brendon Baerg (Doc. 68).

9 DATED this 21st day of February, 2017.

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12 Paul G. Rosenblatt
United States District Judge
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